

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3582 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINMUKAR KANCHANLAL THAKKARBROTHER OF DETENU

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR NM KAPADIA for Petitioner

MR K.T.DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/01/2000

ORAL JUDGEMENT

#. Heard Mr.N.M.Kapadia, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The petitioner - Pravinkumar Kanchanlal Thakker has

filed the present petition under Article 226 of the Constitution of India to challenge the detention order dated 15-4-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu Chandrakant Kanchalal Thakkar, in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short').

#. That the grounds of detention served and supplied under Section 9(1) of the PASA to the detenu, a copy of which is produced at page 25 - 27 interalia indicates that a prohibition case bearing C.R.No : 5084 of 1999 was registered against the detenu Chandrakant Kanchanlal Thakkar at Varachha Road Police Station and indian made foreign liquor was seized from this possession. That in the said cases, the detenu was arrested and released on bail on 3-3-1999.

#. The grounds further indicate that two witnesses on assurance of anonymity have given statement dated 16th march, 1999 against the prejudicial activities of the petitioner which refers to incidents dated 28-1-99 and 18-2-99 respectively. That on the basis of the said material, respondent No.1 - the detaining authority has come to the conclusion that the detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being not sufficient to prevent the detenu from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended at bar on behalf of the petitioner that the detaining authority has failed to consider the less drastic remedy like cancellation of bail under Section 437(5) of CrPC though available before passing the impugned order and as such, on account of said non application of mind, the subjective satisfaction was vitiated and the detention order is rendered invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case also, the detaining authority has stated in the grounds of detention that the detenu having got himself released on bail, is likely to continue his bootlegging activities, and as such, detention order is necessary. However, there is nothing on record to show that the detaining authority had considered less drastic remedy before passing the impugned order. Under these circumstances, I am constrained to hold that on account of the above stated non application of mind, the impugned order is rendered invalid and the petitioner is required to be allowed.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 15-4-99 passed by the respondent No.1 against the detenu - Chandrakant Kanchalal Thakkar is hereby quashed and set aside. He is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 11-1-2000 [A.K.Trivedi, J.]

#kailash#